

ESTTA Tracking number: **ESTTA1049298**Filing date: **04/15/2020**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91254533
Party	Defendant Sturm, Ruger & Company, Inc.
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Date	04/15/2020
Attachments	FINAL Answer to Notice of Opposition.pdf(853406 bytes) Exh. 1 - AR 57 LEM.pdf(438233 bytes) Exh. 2 - 57center.pdf(418415 bytes) Exh. 3 - thefirearmblog.pdf(937745 bytes) Exh. 4 - cmmginc.pdf(280553 bytes) Exh. 5 - masterpiecearms.pdf(381401 bytes) Exh. 6 - Federal Premium American Eagle.pdf(742838 bytes)

Registrations Subject to the filing

Registration No.	2096923	Registration date	09/16/1997
International Registration No.	NONE	International Registration Date	NONE
Registrant	FN HERSTAL Voie de Liege 33 4040 HERSTAL BELGIUM		

Goods/Services Subject to the filing

Class 013. First Use: 0 First Use In Commerce: 0 All goods and services in the class are requested, namely: firearms, automatic pistols, ammunition- and projectiles
Class 016. First Use: 0 First Use In Commerce: 0 All goods and services in the class are requested, namely: magazines, brochures, books and hand-books featuring firearms

Grounds for Cancellation

The mark is or has become generic	Trademark Act Sections 14(3), or Section 23 if on Supplemental Register		
Registration No.	4017800	Registration date	08/30/2011
International Re-	NONE	International Re-	NONE

gistration No.		gistration Date	
Registrant	FN HERSTAL SA Voie de Liège 33 Herstal, B4040 BELGIUM		

Goods/Services Subject to the filing

Class 028. First Use: 0 First Use In Commerce: 0

All goods and services in the class are requested, namely: Toy model and scale model replica fire-arms; toy ammunition and projectiles for toy model and scale model replica firearms; toy cases and holsters for toy model and scale model replica firearms; toy model and scale model replica firearms for virtual shooting; apparatus for electronic games designed for use with replica toy firearms for virtual shooting other than for use with an external display screen or monitor; targets and electronic targets for games

Grounds for Cancellation

The mark is or has become generic	Trademark Act Sections 14(3), or Section 23 if on Supplemental Register
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD**

FN HERSTAL, SA,)	Opposition No.: 91254533
)	Serial No. 88/654,610
Opposer,)	Filed: October 15, 2019
)	Mark: RUGER-57
v.)	Class: 013
)	Published: January 14, 2020
STURM, RUGER & CO.)	
)	
Applicant.)	

**ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS
TO NOTICE OF OPPOSITION**

Applicant STURM, RUGER & CO., INC. (“Ruger”) answers Opposer FN Herstal, SA’s (“Opposer”) Notice of Opposition as follows:

With respect to the prefatory paragraph of the Notice of Opposition, Ruger admits that its RUGER-57 mark in International Class 13 for “Firearms,” Serial No. 88/654,610, was filed on October 15, 2019 and published in the Official Gazette on January 14, 2020. Ruger denies that Opposer will be damaged by the registration of Ruger’s RUGER-57 mark. Ruger is without knowledge or information sufficient to form a belief as to the truth or falsity of Opposer’s principal place of business, and therefore denies those allegations. To the extent the prefatory paragraph contains any other allegations, Ruger denies them.

With respect to the numbered Paragraphs of the Notice of Opposition:

1. The Applicant filed on October 15, 2019 its trademark application for the mark **RUGER-57**, Serial No. 88/654,610 for goods described as “Firearms” in International Class 13.

ANSWER: Admitted.

2. The Applicant’s earliest priority date in the mark is the filing date of the intent to use basis trademark application, Serial No. 88/654,610, specifically October 15, 2020.

ANSWER: Denied.

3. Based upon information and belief, the Applicant at the time of the October 15, 2019 filing of the application had not yet used the mark.

ANSWER: Admitted.

4. The Opposer holds priority of rights in its trademark and name **FIVE-SEVEN**.

ANSWER: Denied.

5. As demonstrating Opposer's priority of rights in its trademark **FIVE-SEVEN** is Opposer's prior use and U.S. registration of the mark **FIVE-SEVEN** which extends for over two decades prior to the filing date of the Applicant's intent to use application, which is Applicant's earliest priority date in Applicant's mark.

ANSWER: Denied.

6. Opposer manufactures, distributes and sells firearms and related items under the trademark **FIVE-SEVEN** (references to Opposer's trademark **FIVE-SEVEN** will incorporate versions of the mark where the mark **FIVE-SEVEN** appears as a portion of a trademark and which also appears in stylized forms or which incorporates other words, letters, numbers and/or design features). Opposer's original **FIVE-SEVEN** branded handgun was designed and developed for standard issue to member states of the North Atlantic Treaty Organization and has since been purchased and used by militaries, law enforcement agencies, and civilians around the globe. Opposer's **FIVE-SEVEN** branded handgun has also been prominently depicted in best-selling video games and blockbuster movies. To date, Opposer has sold hundreds of thousands of handguns bearing the **FIVE-SEVEN** mark. Opposer has extensively promoted and sold these items under the trademark **FIVE-SEVEN** in the U.S. and in many foreign nations.

ANSWER: Ruger admits that Opposer offers firearms using the term "Five-seven" with its "FN" trademark. Ruger denies that Opposer's alleged mark has been "prominently depicted" and/or "extensively promoted" by Opposer. Ruger is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 6 and therefore denies them.

7. Opposer has sought to protect its valuable trademark rights in the trademark **FIVE-SEVEN** for the items sold under this trademark and has obtained Federal trademark registrations duly issued from the United States Patent and Trademark Office, including the following:

<u>MARK</u>	<u>REG. NO. ISSUED</u>	<u>EXHIBIT</u>
FIVE-SEVEN (stylized)	2,096,923 September 16, 1997	1
FIVE-SEVEN	4,017,800 August 30, 2011	2

ANSWER: Ruger admits that Opposer offers firearms using the term “Five-seveN” with its “FN” trademark. Ruger denies that Opposer has trademark rights in the term FIVE-SEVEN. Ruger admits that, according to the U.S. Patent and Trademark Office online records: (1) Opposer owns U.S. Reg. No. 2096923 for Five-SeveN (stylized), which issued on September 16, 1997; and (2) Opposer owns U.S. Reg. No. 4017800 for FIVE-SEVEN (in standard-character format), which issued August 30, 2011. Ruger is without knowledge or information sufficient to form a belief as to the truth or falsity of any remaining allegations contained in Paragraph 7 and therefore denies them.

8. The above referenced Federal trademark registrations showing the mark **FIVE-SEVEN** are in full force and effect and both registrations have achieved “incontestable” registration status with the former of the above registrations having long ago achieved such “incontestable” registration status. The above Federal Registration No. 2,096,923 covers goods identified as “firearms, automatic pistols, ammunition and projectiles” in International Class 13 and “magazines, brochures, books and handbooks featuring firearms” in International Class 16.

ANSWER: Ruger admits that, according to the U.S. Patent and Trademark Office online records, U.S. Reg. No. 2096923 is for “firearms, automatic pistols, ammunition and projectiles” in Class 13 and “magazines, brochures, books, and handbooks featuring firearms” in Class 16. Ruger admits that, according to the U.S. Patent and Trademark Office online records, U.S. Reg. No. 2096923 and U.S. Reg. No. 4017800 are incontestable. Ruger is without knowledge or information sufficient to form a belief as to the truth or falsity of any remaining allegations contained in Paragraph 8 and therefore denies them.

9. Opposer’s rights in its **FIVE-SEVEN** mark stretch across multiple classes of goods and services. Due to Opposer’s fame in the underlying mark, consumers have demanded even toy models and non-firearms replicas of the firearm associated with Opposer’s **FIVE-SEVEN** mark—as such, Registration No. 4,017,800 covers toy and replica firearms and related products in International Class 28.

ANSWER: Ruger denies that Opposer has any rights or “fame in the underlying mark.” Ruger admits that, according to the U.S. Patent and Trademark online records, Opposer’s

U.S. Reg. No. 4017800 for FIVE-SEVEN (in standard-character format) covers “Toy model and scale model replica firearms; toy ammunition and projectiles for toy model and scale model replica firearms; toy cases and holsters for toy model and scale model replica firearms; toy model and scale model replica firearms for virtual shooting; apparatus for electronic games designed for use with replica toy firearms for virtual shooting other than for use with an external display screen or monitor; targets and electronic targets for games” in International Class 28. Ruger is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 9, and therefore denies them.

10. By reason of Opposer’s extensive promotion and sales of its products under Opposer’s trademark **FIVE-SEVEN**, the trademark **FIVE-SEVEN** has acquired great recognition and renown in the relevant trade, and prospective purchasers have come to recognize such trademark as signifying Opposer.

ANSWER: Denied.

11. Notwithstanding Opposer’s well-known and established rights in its **FIVE-SEVEN** trademark, Applicant has recently filed the trademark “**RUGER-57**” and has very recently commenced use of this mark and variations of the trademark, where at times it has been referred to as **FIVE SEVEN**, in connection with a directly competing firearm to Opposer’s **FIVE-SEVEN** branded firearm.

ANSWER: Ruger admits that it recently started using the trademark “**RUGER-57**” in connection with a pistol designed and manufactured by Ruger and chambered for the 5.7x28mm cartridge. That cartridge, and therefore the pistol’s caliber, is referred to simply as “57” and is routinely pronounced and spelled out as “five seven.” Ruger admits that its **RUGER-57** pistol competes with numerous other pistols, including the pistol that Opposer offers in connection with the designation FN Five-seveN, which also is chambered for the 5.7x28mm cartridge. Ruger denies the remaining allegations in Paragraph 11.

12. Applicant's egregious violations of Opposer's rights in its **FIVE-SEVEN** mark include where Applicant, through its employees or representatives, pronounces in its own published marketing materials the "57" element of its mark as "Five Seven" (not "fifty-seven") and Applicant at times refers to its own **RUGER-57** branded product as simply the "Five Seven" with no reference to the term "Ruger." Moreover, Opposer understands that Applicant markets its purported **RUGER-57** mark in connection with a firearm similar or nearly identical in size, purpose, weight, feel, color, caliber, capacity, features, and even style to the **FIVE-SEVEN** branded firearm marketed and sold by Opposer for more than 20 years. For example, both firearms are chambered to fire Opposer's designed and developed proprietary ammunition, both firearms come in 10 and 20 round capacity variants, both firearms are available in black, and both firearms constitute the same general form factor.

ANSWER: Ruger admits that it pronounces the "57" portion of "RUGER-57" as "five seven," and not "fifty seven" because, as described above, that pronunciation is used to communicate the caliber of its firearm. Ruger admits that its RUGER-57 firearm is a pistol and that Opposer's FN Five-seveN firearm also is a pistol and, as such, the two products necessarily share certain similarities. Ruger admits that, like many other pistols, its RUGER-57 pistol and Opposer's FN Five-seveN pistol are generally similar in size (they are handguns) and weight, that both are offered with 10-round magazines (which is standard because several states have 10-round magazine capacity restrictions) and 20-round magazines, and that both are chambered for the 5.7x28mm cartridge which, again, is called the "57" (and pronounced "five seven"). Ruger denies that the pistols are "virtually identical" because, among other things, the RUGER-57 utilizes steel magazines and therefore has a significantly smaller grip circumference, generally has a slimmer profile, is visually distinct, and has a safety lever located in a different location. Ruger admits that Opposer sells 5.7x28mm ammunition. Ruger is without information regarding whether the 5.7x28mm cartridge is proprietary and therefore denies the same. Ruger denies that its RUGER-57 pistol and Opposer's FN Five-seveN pistol are similar in feel, purpose, color (other than the black version of the FN Five-seveN), features, and style. Ruger denies that

Opposer has trademark rights in the term FIVE-SEVEN and that Ruger has violated any rights Opposer may own in the “FN Five-seven” stylization. Ruger is without knowledge or information sufficient to form a belief about the remaining allegations in Paragraph 12 and therefore denies them.

13. Applicant’s mark **RUGER-57**, subsumes Opposer’s trademark **FIVE-SEVEN** in whole and verbatim, so as to further increase the likelihood of confusion, mistake or deception, as well as to create the incorrect belief among consumers that Applicant’s products marketed and sold in connection with the **RUGER-57** mark are somehow associated with, affiliated with, or endorsed by Opposer.

ANSWER: Denied.

14. Applicant’s underlying intent-to-use application being opposed describes the goods sought for registration as “Firearms.” These goods are identical in description to goods listed in Opposer’s Registration No. 2,096,923 and are identical, overlapping, complementary, and/or related to the goods sold by Opposer under Opposer’s prior used and long registered mark **FIVE-SEVEN** for such goods.

ANSWER: Ruger admits that its application for RUGER-57 in International Class 13 for “Firearms,” Serial No. 88/654,610, was filed on an intent-to-use basis. Ruger denies the remaining allegations contained in Paragraph 14.

15. Opposer’s products sold under the trademark **FIVE SEVEN** have been extensively promoted throughout the United States to the relevant trade and to the consuming public. The Opposer’s longstanding use of the mark **FIVE-SEVEN** has been continuous and uninterrupted up to and including the present time.

ANSWER: Ruger denies that Opposer has trademark rights in “FIVE SEVEN” (with or without a hyphen). Ruger denies that Opposer’s alleged mark has been “extensively promoted” by Opposer. Ruger is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 15, and therefore denies them.

16. By reason of Opposer’s aforesaid registrations, and extensive promotion and sale of its products, Opposer’s trademark **FIVE-SEVEN** has acquired significant recognition and

renown, and the relevant trade and public have come to recognize the name and trademark **FIVE-SEVEN** as signifying Opposer exclusively.

ANSWER: Denied.

17. Applicant's claimed trademark **RUGER-57** (with 57 often pronounced as FIVE-SEVEN) for use in connection with "Firearms" in International Class 13, is so similar to Opposer's trademark, **FIVE-SEVEN**, as to be likely to create confusion, mistake or deception, all to the damage of Opposer, and to the damage of Opposer's rights in its trademark to which Opposer holds prior rights, as demonstrated by Opposer's prior use and prior registrations for the mark **FIVE-SEVEN**.

ANSWER: Denied.

18. Neither of Opposer's asserted registrations, nor Applicant's application which is the subject of this opposition proceeding include any limitation as to the types of consumer, trade channels, or price points, and would be considered as covering all possible consumers, trade channels, and price points, in the relevant trade or industry.

ANSWER: Denied.

19. Based upon information and belief, the goods identified in the Applicant's application for the opposed trademark and those products sold under the Opposer's mark **FIVE-SEVEN** could be sold to the same potential consumers or end-users. Moreover, Applicant's description of goods in the pending application specifically includes goods identified within the Opposer's prior referenced Registration No. 2,096,923.

ANSWER: Ruger admits that its application for RUGER-57 in International Class 13 is for "Firearms," Serial No. 88/654,610. Ruger further admits that the details of Registration No. 2,096,923 are public records, speak for themselves, and require neither an admission nor a denial. Ruger is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 19, and therefore denies them.

20. Applicant's mark showing the number 57 (often pronounced as FIVE-SEVEN) incorporates all of Opposer's word mark. As such the Applicant's mark is highly similar to the Opposer's mark and likely to give rise to confusing similarity.

ANSWER: Denied.

21. Proposed use by the Applicant of the opposed trademark, for which registration is sought in the application opposed herein, is without Opposer's consent or permission.

ANSWER: Ruger admits that it has used RUGER-57 without Opposer's consent and permission because such consent and permission are neither needed nor appropriate, and Ruger has obtained the consent, permission, and approval of the United States Patent and Trademark Office for its application for RUGER-57 to proceed to publication. Ruger denies the remaining allegations contained in Paragraph 21.

22. The Applicant's mark is confusingly similar to Opposer's mark in sound.

ANSWER: Denied. Ruger further denies that Paragraph 22 complies with the relevant pleading standard as it is vague and ambiguous.

23. The Applicant's mark is confusingly similar to Opposer's mark in appearance.

ANSWER: Denied.

24. The Applicant's mark is confusingly similar to Opposer's mark in connotation.

ANSWER: Denied. Ruger further denies that Paragraph 24 complies with the relevant pleading standard as it is vague and ambiguous.

25. The goods identified in the Applicant's application are identically described in Opposer's Registration No. 2,096,923, and closely related and complementary or of the same variety to the goods sold under Opposer's FIVE-SEVEN mark.

ANSWER: Denied. Ruger further denies that Paragraph 25 complies with the relevant pleading standard as it is vague and ambiguous.

26. The goods identified in the Applicant's application could be sold to similar customers or through identical or related channels of trade as the goods sold under Opposer's FIVE-SEVEN mark.

ANSWER: Denied. Ruger further denies that Paragraph 26 complies with the relevant pleading standard as it is vague and ambiguous.

27. Opposer is being damaged by the Applicant's application, and will be damaged by the registration of the Applicant's application because Applicant's mark is highly similar to Opposer's FIVE-SEVEN mark, and the use and registration of Applicant's mark will tend to cause confusion or mistake, or will deceive purchasers into the erroneous belief that Applicant's goods

are the goods of Opposer, or that such goods are authorized and/or sponsored by, or are otherwise connected with Opposer, and thus, such use and registration will grant to Applicant substantial aspects of the goodwill Opposer has established in its **FIVE-SEVEN** mark.

ANSWER: **Denied.**

28. Applicant's opposed mark is highly similar to Opposer's **FIVE-SEVEN** mark and is likely, when applied to Applicant's goods, to cause confusion, mistake, or to deceive within the meaning of Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d).

ANSWER: **Denied.**

29. In view of the above, Applicant's registration of the opposed trademark and design will result in damage to Opposer, and in the diminishment in sales and the loss of the value of the Opposer's mark **FIVE-SEVEN** as alleged herein.

ANSWER: **Denied.**

FIRST AFFIRMATIVE DEFENSE

Opposer fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

There is no likelihood of confusion, mistake or deception between Ruger's RUGER-57 mark, Serial No. 88/654,610, and Reg. Nos. 2,096,923 and 4,017,800 because "RUGER-57" and "Five-seveN" are not confusingly similar in that they differ significantly in appearance, sound, and commercial impression.

THIRD AFFIRMATIVE DEFENSE

Ruger has never experienced any actual confusion with respect to Opposer's customers, vendors, creditors or others.

FOURTH AFFIRMATIVE DEFENSE

There is no likelihood of confusion, mistake or deception between Ruger's RUGER-57 mark, Serial No. 88/654,610, and Reg. Nos. 2,096,923 and 4,017,800 where Ruger's mark in its entirety is dissimilar to Opposer's marks in their entirety. The RUGER-57 mark incorporates Ruger's famous, valuable and protectable house mark, RUGER®, and as such, "RUGER" is the

primary and most distinctive element of its composite mark. Use of Ruger's house mark dispels any likelihood that consumers will be confused as to the source of Ruger's products.¹

FIFTH AFFIRMATIVE DEFENSE

Registration Nos. 2,096,923 and 4,017,800 are invalid because the term "FIVE-SEVEN" (including in the numerical form "57", which is pronounced "five seven") is a generic term commonly used and recognized by consumers in the relevant public to identify the class and caliber of firearms chambered for the 5.7x28mm cartridge.

SIXTH AFFIRMATIVE DEFENSE

There are other trademarks incorporating the words or numerals "FIVE-SEVEN" or "57" and close variations thereof in connection with firearms and related accessories.² Opposer does not own the exclusive right to the numbers "57" or the words "FIVE-SEVEN" in connection with firearms. Opposer is not entitled to protection that would prevent Ruger from registering its "RUGER-57" mark.

¹ In support of this affirmative defense, Ruger directs the Board to *Sorensen v. WD-40 Co.*, 792 F.3d 712, 726 (7th Cir. 2015) (recognizing junior user's well-known WD-40 mark was sufficient to dispel confusion); *Packman v. Chicago Tribune Co.*, 267 F.3d 628, 645 (7th Cir. 2001) (the presence of the Chicago Tribune mark on each page of a newspaper edition which used plaintiff's "Joy of Six" mark dispelled consumer confusion); *Nabisco, Inc. v. Warner-Lambert Co.*, 220 F.3d 43 (2d Cir. 2000) (holding that junior user's DENTYNE ICE for chewing gum did not infringe the senior user's ICE BREAKERS for chewing gum because junior user mark incorporated its widely-recognized DENTYNE family of gums and noting that use of the DENTYNE house mark "significantly reduces, if not altogether eliminates, the likelihood that consumers will be confused as to the source of the parties' products."). See also *Knight Textile Corp. v. Jones Investment Co.*, 75 USPQ2d 1313 (TTAB 2005) (Applicant's NORTON MCNAUGHTON ESSENTIALS trademark for women's clothing found not confusingly similar to opposer's registered ESSENTIALS mark for similar goods); *In re Deutsche Telekom AG*, Serial No. 78492246 (March 7, 2007) (Applicant's "T-Mobile news express" mark for telecommunications services found not confusingly similar to opposer's registered NEWSEXRESS mark for similar services).

² See, e.g., Serial No. 88019335 for "5.7 DEMON" in Class 13 for "Firearms; Rifle ammunition"; Serial No. 88328316 for M1157 in Class 13 for "Ammunition"; Serial. No. 88742027 for MN157 in Class 13 for "Gun mounts; Firearm attachments, namely, mounts for attaching gun sights to a firearm; Mobile gun mounts".

SEVENTH AFFIRMATIVE DEFENSE

The United States Patent and Trademark Office (“USPTO”) examining attorney who approved Ruger’s RUGER-57 mark for publication did not find any prior registered or pending marks that might be confusingly similar to Ruger’s mark at that time. Thus, Ruger’s RUGER-57 mark is not confusingly similar to Opposer’s cited marks.

EIGHTH AFFIRMATIVE DEFENSE

Ruger is entitled to the registration of RUGER-57 in International Class 13 for “Firearms,” Serial No. 88/654,610, because the numerals “57” are generic in nature. “Five-seven” or “57” in written or numerical form is commonly used in the relevant firearm industry in to denote products chambered to fire 5.7x28mm ammunition, and has been for many years prior to Ruger’s application for “RUGER-57,” and therefore Opposer’s opposition to Ruger’s trademark application is meritless.

NINTH AFFIRMATIVE DEFENSE

Ruger’s use of “57” within RUGER-57 is a permissible fair use because it communicates the caliber of its pistol.

TENTH AFFIRMATIVE DEFENSE

Opposer has no proprietary rights in caliber designations *per se*.

Ruger reserves any and all additional affirmative defenses under Rule 8(c) of the Federal Rules of Civil Procedure, under the Lanham Act, and in law or in equity that may now exist or in the future be available based on discovery and further factual investigation of this case.

COUNTERCLAIMS

1. Applicant STURM, RUGER & CO., INC. (“Ruger”) is the owner of U.S. Serial No. 88/654,610 for the mark RUGER-57 in International Class 013 for Firearms, filed in the U.S. Patent and Trademark Office on October 15, 2019.

2. Serial No. 88/654,610 was published in the Official Gazette on January 14, 2020, and an opposition was filed by Opposer FN HERSTAL, SA (“Opposer”) on March 9, 2020.

RUGER, ITS PRODUCTS, AND TRADEMARKS

3. With roots tracing back to 1949, Ruger is one of the nation’s leading firearm manufacturers. Through its quality craftsmanship and innovations, Ruger has helped revolutionize the firearm industry and has earned a reputation as an American manufacturer of rugged and reliable firearms.

4. In 1949, with an initial investment of only \$50,000 and an idea, Ruger’s founders started the company by producing a .22 caliber autoloading pistol.

5. Since then, Ruger has grown and expanded its offerings to include more than 40 product lines totaling over 700 SKUs for the commercial, sporting, military, and law enforcement markets.

6. Through decades of use, substantial sales and advertising, and third-party recognition and acclaim, Ruger has become a well-known and trusted firearms brand, and the RUGER trademark has achieved substantial fame such that consumers associate the RUGER mark with the Company’s reputation for producing rugged, reliable firearms.

7. Building on its tradition of innovation, in January 2020, Ruger introduced its new RUGER-57 pistol, chambered for the 5.7x28mm cartridge. Consumers rarely denote the caliber using its full designation but, rather, refer to it simply as “57” and pronounce it “five seven.” Ruger

chose the RUGER-57 name because it combines its well-known RUGER trademark with the “57” caliber designation. The RUGER-57 pistol is shown below.



8. Like its RUGER-57 mark, Ruger has branded a number of its other products with trademarks that combine the firearm’s caliber with other words, letters, or numbers to form a protectable composite, *e.g.*:

EC9s®



Caliber: 9mm Luger

RUGER® SR-556 TAKEDOWN®



Caliber: 5.56 NATO

RUGER® LC380®



Caliber: .380 Auto

SR22®



Caliber .22 LR

LC9s®



Caliber: 9mm Luger

RUGER 77/22®



Caliber: .22 Hornet

SECURITY-9®



Caliber: 9mm Luger

22 CHARGER™



Caliber: .22 LR

9. Ruger does not, and cannot, claim trademark rights in any generic caliber designations, *per se*. Nor can anyone else.

10. Ruger is not alone. It is common practice in the firearms industry to include a firearm's caliber within a larger trademark or product name, *e.g.*:



**Caliber: 5.7x28mm
(Excel Arms)**



**Caliber: 5.7x28mm
(Diamondback Firearms)**



**Caliber: 5.7x28mm
(MasterPiece Arms)**



**Caliber: .22 LR
(Smith & Wesson)**



**Caliber: 9mm
(Heckler & Koch)**



**Caliber: .22 LR
(Tarus International)**



**Caliber: .380 Auto
(Smith & Wesson)**



**Caliber: .40 S&W
(Heckler & Koch)**



**Caliber: .22 LR
(Tarus International)**



**Caliber: 9mm
(Smith & Wessen)**



**Caliber: .45 ACP
(Heckler & Koch)**



**Caliber: .454 Casull
(Tarus International)**



**Caliber: 9mm
(FN Herstal)**



**Caliber: .40 S&W
(FN Herstal)**



**Caliber: .45 ACP
(FN Herstal)**



**Caliber: .500 S&W
Magnum
(Smith & Wessen)**



**Caliber: 5.56x45mm
(Heckler & Koch)**



**Caliber: 9mm Luger
(Tarus International)**

AR FIVE SEVEN



**Caliber: 5.7x28mm
(57 Center)**

MR762A1



**Caliber: 7.62x51mm
(Heckler & Koch)**

OPPOSER, ITS PRODUCTS, AND THE “FN Five-seveN” MARK

11. Opposer offers, promotes, and sells a pistol chambered for 5.7x28mm ammunition under the mark “FN Five-seveN”, *e.g.*:



12. Opposer’s “FN Five-seveN” mark capitalizes the letters “F” and “N” to tie to the first part of the company’s name (the latter part “Herstal” is ostensibly the geographic town where Opposer is located), which serves as its core trademark and which is covered by numerous trademark registrations, including U.S. Registration Nos. 4531259 (FN), 4721907 (FN SMART CORE), 4017799 (FN HERSTAL), 4017801 (FN, Stylized), 3359918 (FN HERSTAL), 5202911 (FN 15), 5465295 (FN 509), 5465457 (FN 16), 5772745 (FN MAG), and pending application Serial Nos. 79278730 (FN ARIA), 79278792 (FN PROPASS), 79278835 (FN PERMAX),

87634845 (FN FAL THE RIGHT ARM OF THE FREE WORLD), 87157112 (FN 503), 87600780 (FN FAL), and 88843455 (FN 22-MRD).

13. Opposer asserts two registrations in its Notice of Opposition.

14. Registration No. 2,096,923 is for the words “Five-seveN” in a particular stylized appearance in International Class 013 for firearms, automatic pistols, ammunition and projectiles and in Class 016 for magazines, brochures, books and handbooks featuring firearms.

15. Registration No. 4,017,800 is a standard character mark for “FIVE-SEVEN” in International Class 028 for toy model and scale model replica firearms; toy ammunition and projectiles for toy model and scale model replica firearms; toy cases and holsters for toy model and scale model replica firearms; toy model and scale model replica firearms for virtual shooting; apparatus for electronic games designed for use with replica toy firearms for virtual shooting other than for use with an external display screen or monitor; targets and electronic targets for games.

16. Opposer claims that as a result of its use of the word “FIVE-SEVEN” to denote firearms chambered for 5.7x28mm ammunition, it is now the sole owner of the generic phrase “five seven” in written or numerical form with respect to 5.7x28mm caliber firearms and related accessories.

17. “Five seven” or “57” in written or numerical form is used and understood in the relevant firearm industry in a generic sense to denote products chambered for 5.7x28mm caliber ammunition, and was prior to Ruger’s application for “RUGER-57”.

18. Several other manufacturers also use “57” or “five seven” in reference to caliber size. See Exhibit 1 (<https://www.atlanticfirearms.com/products/ar-57-lem-5-7x28-tactical-rifle>) (AR 57); Exhibit 2 (<http://www.57center.com/>) and Exhibit 3

<https://www.thefirearmblog.com/blog/2016/06/28/review-ar57-the-poormans-p90/>) (AR Five Seven); Exhibit 4 (<https://cmmginc.com/product/upper-group-kit-banshee-200-mk57-5-7-x-28mm-2-40rd-mags/>) (MK57); Exhibit 5 (<https://masterpiecearms.com/shop/mpa57sst-5-7x28mm-pistol/>) (57DMG); Exhibit 6 (<https://www.academy.com/shop/pdp/federal-premium%C2%AE-american-eagle-57-x-28mm-40-grain-centerfire-rifle-ammunition>).

19. Because firearms are commonly identified by their caliber, and the numbers “57” (which are pronounced “five seven” and not “fifty-seven”) denote the 5.7x28mm cartridge, their primary significance to the relevant public is as an indication of the class of products, namely firearms chambered for that cartridge.

20. Opposer itself has used the numbers 5.7 (pronounced “five seven”) generically to denote a caliber type. For example, the following statement appears on its website (<https://www.fnherstal.com/en/product/five-seven>):

Together with the FN P90[®] submachine gun, the FN Five-seveN[®] Tactical Mk2 handgun and associated cartridge constitute the iconic FN[®] 5.7 Weapon System.

21. As a result of the accepted use and understanding of “57” to denote the caliber size of a particular firearm, Opposer’s alleged “Five-seveN” or “FIVE-SEVEN” mark in Classes 013, 016 and 028 is generic.

22. Opposer may not corner the market on a term that denotes the caliber size of a particular firearm. To permit exclusive trademark rights in a generic name “would grant the owner of the mark a monopoly, since a competitor could not describe his goods as what they are.” *CES Publishing Corp. v. St. Regis Publications*, 531 F.2d 11, 188 U.S.P.Q. 612, 615 (2d Cir. 1975).

23. The continued registrations of Opposer, namely, Reg. Nos. 2,096,923 and 4,017,800, on the federal trademark register constitute an obstacle to Ruger's use and registration of its "RUGER-57" mark. Opposer's continued registrations, thus, are causing injury and damage to Ruger.

FIRST COUNTERCLAIM
Cancellation of Registration No. 4,017,800 for Genericness
Under Section 14 of the Lanham Act, 15 U.S.C. § 1064

24. Ruger repeats and realleges the allegations set forth in Paragraphs 1 – 23, above.

25. Pursuant to 37 CFR §2.106(b)(3) and Section 313 of the Trademark Trial and Appeal Board Manual of Procedure, Ruger files this counterclaim to cancel Reg. No. 4,017,800 for "FIVE-SEVEN" in International Class 028 for toy model and scale model replica firearms; toy ammunition and projectiles for toy model and scale model replica firearms; toy cases and holsters for toy model and scale model replica firearms; toy model and scale model replica firearms for virtual shooting; apparatus for electronic games designed for use with replica toy firearms for virtual shooting other than for use with an external display screen or monitor; targets and electronic targets for games.

26. Opposer is the listed owner of U.S. Trademark Registration No. 4,017,800 for FIVE-SEVEN.

27. Opposer, Ruger, and the public use and understand the numbers "57" (which are pronounced "five seven") to denote the caliber of firearms chambered for the 5.7x28mm cartridge, and not as a source-identifying trademark.

28. Ruger and others have a competitive and equal right to use the numbers "57" (including in the alphabetic form "five seven" in which those numbers are pronounced and written) to identify firearms chambered for the 5.7x28mm cartridge.

29. If Opposer is allowed to maintain its registration for the generic designation FIVE-SEVEN, it will effectively misappropriate a generic term for its exclusive use at the expense of Ruger, others in the industry, and the public.

30. For the reasons set forth above, Opposer is not entitled to the continued registration of “FIVE-SEVEN” in Class 028 or to the legal presumptions that the registration creates.

31. Registration No. 4,017,800 for FIVE-SEVEN should be cancelled under Section 14 of the Trademark Act, 15 U.S.C. § 1064.

WHEREFORE, Ruger prays that Reg. No. 4,017,800 be cancelled.

SECOND COUNTERCLAIM
Cancellation of Registration No. 2,096,923 for Genericness
Under Section 14 of the Lanham Act, 15 U.S.C. § 1064

32. Ruger repeats and realleges the allegations set forth in Paragraphs 1 – 31, above.

33. Pursuant to 37 CFR §2.106(b)(3) and Section 313 of the Trademark Trial and Appeal Board Manual of Procedure, Ruger files this counterclaim to cancel Reg. No. 2,096,923 for “Five-seveN” in connection with firearms, automatic pistols, ammunition and projectiles in Class 013 and magazines, brochures, books and handbooks featuring firearms in Class 016.

34. Opposer is the listed owner of U.S. Trademark Registration No. 2,096,923 for Five-seveN.

35. Opposer, Ruger, and the public use and understand the numbers “57” (which are pronounced “five seven”), to denote the caliber of firearms chambered for the 5.7x28mm cartridge, and not as a source-identifying trademark.

36. Ruger and others have a competitive and equal right to use the numbers “57” (including in the alphabetic form “five seven” in which those numbers are pronounced and written) to identify firearms chambered for the 5.7x28mm cartridge.

37. If Opposer is allowed to maintain its registration for the generic designation Five-seveN, it will effectively misappropriate a generic term for its exclusive use, at the expense of Ruger, others in the industry, and the public.

38. For the reasons set forth above, Opposer is not entitled to the continued registration of “Five-seveN” in Classes 013 and 016 or to the legal presumptions that the registration creates.

39. Registration No. 2,096,923 for Five-seveN should be cancelled under Section 14 of the Trademark Act, 15 U.S.C. § 1064.

WHEREFORE, Ruger prays that Reg. No. 2,096,923 be cancelled.

PRAYER FOR RELIEF

WHEREFORE, Ruger respectfully requests that Opposer’s Notice of Opposition against Ruger’s Application Serial No. 88/654,610 be dismissed with prejudice, that the Board enter judgment in Ruger’s favor on each and every counterclaim set forth above, and that the Board award Ruger such other and further relief as it may deem just and appropriate.

Dated: April 15, 2020

Respectfully submitted,

SWANSON, MARTIN & BELL, LLP

/Jonna McGinley Reilly/
STURM, RUGER & CO.

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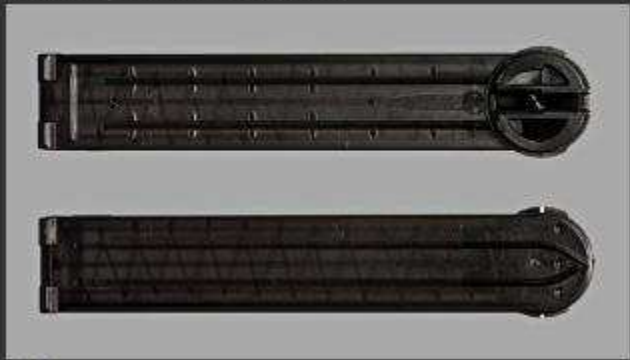
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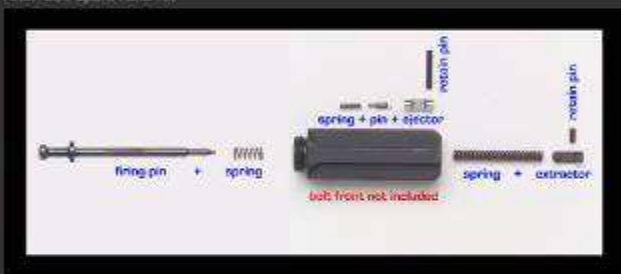


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Description AR57 Bolt Spare Parts Kit includes: Firing Pin + Firing Pin Spring / Ejector + Ejector Pin + Ejector Pin Spring + Ejector Retain Pin / Extractor + Extractor Spring + Extractor Retain Pin MSRP \$29.00

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Title

Image

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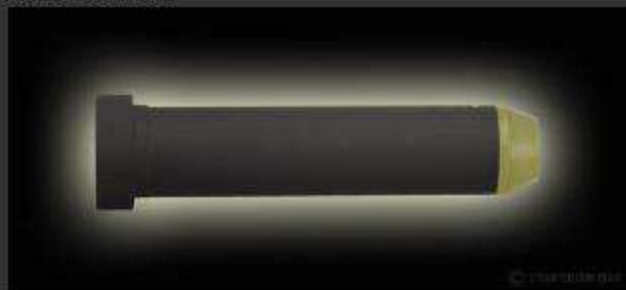
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9 Title
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10 Title
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Review: AR57 The Budget P90

Posted June 28, 2016 in [AR-15](#), [Guns & Gear](#), [Other Gear & Gadgets](#), [Reviews](#) by [Nicholas C](#) with [22 Comments](#)
Tags: [5.7x28mm](#), [ar57](#), [Five Seven](#), [Five-Seven](#), [FNH](#), [p90](#)



[57Center](#) makes the AR57. It is an [upper receiver](#) for your AR lower to shoot 5.7x28mm ammo. The only other guns that shoot this ammo is the FNH P90 and their handgun the Five Seven pistol. I got this pistol/SBR upper with a 6" barrel. 57Center offers their uppers with a 16" and 12" barrels. The upper receiver itself stays the same regardless of barrel length.

The AR57 uses a P90 magazine. For those not familiar with the P90 and it's magazine, the magazine holds 50 rounds of 5.7x28mm but they are arranged perpendicularly to the body of the magazine and gun. Spring pressure pushes the rounds out like a traditional magazine. However the feedlips have a ramp, think of a multi level car garage. So the cartridges sort of drift 90 degrees down the ramps to line up with the bore and chamber.

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The AR57 upper has a cutout to allow for this magazine to lay on top of the upper receiver.



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The position of the magazine is necessary for the function of the gun. However it does present issues with mounting optics. The AR57 upper has two sections of top rail. A short one at the front of the handguard and a medium length rail at the back of the receiver. You can mount iron sights like I have with MBUS. However that limits your optic options. As you can see above, there is only room for a red dot. You could mount a scope on this setup but it will take up most of the top rail. Putting a scope on this setup does have its own issues, such as the scope will be in the path of the magazine so you would have to insert the magazine sideways and then down.

I opted for the 6" barrel upper since I wanted to tuck my SilencerCo SpectreII back and under the handguard.





The handguard is rather narrow so while you could possibly install a [flash hider](#) I do not think it would be a good idea. Remember the [AR pistol with the muzzle brake](#) under the handguard? Only a suppressor or even a faux suppressor would be safe to use with this upper receiver. Obviously that is not an issue for the 12" which the muzzle protrudes just past the end of the handguard. And the 16" barreled version has a rather long barrel past the handguard.

Running the AR57 suppressed was pleasant. It was hearing safe and I did not experience any gas to the face when shooting it suppressed. I would equate it to suppressing a .22 VWMR round. Sound wise it is similar to shooting a .22wmr suppressed.

One issue with running a suppressor on the short 6" barrel AR57 upper is how far retracted the barrel is. Yes I chose this option however trying to remove the suppressor can be difficult. At one point I was unscrewing the Spectrell off the AR57 upper and the threaded end cap seized up on the barrel while the suppressor unscrewed itself from the threaded endcap. As you can see in the photos above, there is not a lot of room to grab onto the sides of the threaded end cap to unscrew it. I had to use a flat head screw driver to turn the end cap. Only because of the shape and design of the end cap was I able to do that. If you had a different can rated for 5.7x28mm, like the Bowers USS 22 suppressor there is nothing to grab onto and it would be very difficult to remove it. The Bowers USS 22 does have interchangeable threaded endcaps so it would not be a huge loss to leave a dedicated end cap on the AR57 if you were to use that suppressor. Otherwise I would recommend getting another suppressor to be dedicated to this weapon system if you can afford to do so.

One thing that surprised me was how short the AR57 was with the Spectrell suppressor. It is as long as a P90 with suppressor.



Some of you may be asking: "Why do you have a PMAG inserted into the AR57?". It is actually a brass catcher. Just like the P90, the AR57 ejects the spent brass downwards. You do not need to use an AR magazine but it is nice to use as a brass catcher. Only problem is that you need to permanently modify the magazine.

You need to remove the follower and spring from the magazine so that the empty brass can fall into the mag body. You also need to chop off the feed lips so the magazine can insert properly and engage with the magazine catch. Since the rounded feed lips are removed, you need to depress the magazine release button to insert the modified brass catching mag. Otherwise the edge of the magazine will hit the magazine catch and you can't insert it further.



I chose a PMAG Gen 2 for a fundamental reason. The base plate and dust cover. Most magazine base plates are locked in place due to a spring pushing a floor plate down onto the base plate thereby locking it in place. With the magazine and follower removed there is nothing to keep the base plate from sliding off the magazine. That is where the Gen 2 PMAG steps in. The dust cover can attach and lock onto the bottom of the magazine to keep the base plate from coming off.

I was able to shoot a full 50 rounds without malfunctions and the modified PMAG contained all 50 pieces of spent brass. I will say this though, the 5.7x28mm is a very dirty round. A lot of carbon residue is blown downwards and into the magazine brass catcher.



The AR57 came with a new 8oz buffer which you replace your existing carbine buffer in your AR lower. Then it is a simple matter of replacing your upper receiver with the AR57 upper receiver. I did have issues of tolerance with my Troy Defense billet lowers. I could not get the AR57 upper to fit onto my Troy lowers. So I ended up using my Salient Arms International lower receiver. While the SAI lower is also billet it was able to fit the AR57 upper.

Aside from compatibility issues with my Troy lowers, The AR57 upper has a couple quirks. The magazine catch works but does not seem to engage the magazine completely. And when the side levers are pulled to release the mag catch, the catch protrusion does not seem to retract all the way so inserting and removing the magazine takes a bit more effort than I would like.



Magazine catch deployed.

The AR57 has a folding non-reciprocating side charging handle. It is on the right side of the receiver.



I prefer to have side charging handles on the left hand side. Now the AR57 upper appears to have a mirrored slot on the right side to allow for the charging handle to be installed on the left. But as you can see below, the AR bolt catch/release gets in the way. I suspect that if you removed the bolt release, then you could run the charging handle on the left side.



The AR57 upper works great but it is still not as cool as a select fire P90. Click on the Instagram video below.



[View this post on Instagram](#)

#ar57 vs #fnP90 one I can own the other one I can't. At least the AR57 is suppressed.
#suppresseverything #fiveseven #57x28 @fn_america #fullauto #machinegun #57center

A post shared by Nick Chen (@solsrud007) on May 13, 2016 at 7:35am PDT

I like the way the gun is setup except for side and bottom picatinny rails. I would rather see 57Center update the handguard design and go with MLOK. I believe it would greatly reduce the weight of the upper receiver and modernize the look a bit. There is no need for so much picatinny rail on the sides. Also by opting for an MLOK hand guard design it should be easier to machine and be faster to manufacture.

The AR57 upper retails for \$745.99 on 57Center.com. The [upper receivers](#) do not come with a P90 magazine so make sure you order one. I did not know this so I had to call around to my local gun stores and had to go buy one. Not a deal breaker, just a little annoying. I did not see this mentioned on their website and I think they should have it posted up to inform customers.

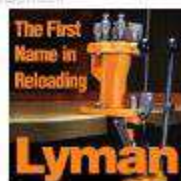


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Posted June 26, 2016 in [Ammunition](#), [Daily News](#) by [Richard Johnson](#) with [2 Comments](#)

Tags: [26 Nosler](#), [280 Ackley Improved](#), [handloading](#), [Redding reloading](#)





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DESCRIPTION

The BANSHEE 200 5.7x28mm upper receiver has an 8-inch barrel and features CMMG's patented Radial Delayed Blowback operating system. The receiver and hand guard are hard coat anodized and come with a pre-installed CMMG mil-spec charging handle, CMMG SV Brake and a CMMG RML7 M-LOK Hand Guard. This package ships with two 40-round 5.7 AR Conversion Magazines.

All of our Upper Groups come complete with BCG

TECH SPECS:

CALIBER: 5.7x28mm

BARREL: 8" 1-9 Twist, Medium Taper 416SS

MUZZLE: SV Brake, threaded 1/2-28

GAS PORT LOCATION: N/A

RECEIVER: Forged 7075-T6 AL M4 type upper

HAND GUARD: CMMG RML7 M-Lok hand guard

FINISH: Hard Coat Anodized Receivers and Hand Guard (Can be upgraded to Cerakote)

CHARGING HANDLE: CMMG Mil-Spec

MAGAZINE: CMMG 40Rd x2

All Products come with CMMG's Lifetime Quality Guarantee

ALL NFA RULES APPLY

For information not covered here, or Frequently Answered Questions, check our [FAQ Page](#).



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MPA57DMG 5.7x28mm Pistol

\$679.99

MSRP: \$679.99

1

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SKU: MPA57sst Categories: 5.7x28mm,
Defender Series, Pistols Tags: 5.7x28mm,
pistol

Description

Additional Information

Description

MPA57DMG Pistol

The new 57DMG uses a fully machined aluminum lower receiver and fully machined aluminum grips. The coating on this model is cerakote black, but other colors are available.

The machining of the lower and grip reduces weight and certainly increases the level of comfort and ergonomics from our previous design MPA57SST.

Each receiver is laser engraved with the appropriate information. The new design also provides complete compatibility with the FN57 magazines in both 20 and 30 round capacity.

- Cal: 5.7x28mm
- one (1) 20 Round Polymer Magazine
- one (1) Muzzle Brake
- Side Cocker
- Scope Mount
- Semi Auto Design
- 5" Barrel
- Thread Size - 1/2x28

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4.0

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[Gauge/Caliber:](#) 5.7X28

[Grain Weight:](#) 40

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Image shown may not reflect actual packaging. Please review your final order to ensure desired caliber and quantity will be delivered.

DETAILS & SPECS REVIEWS Q&A

Features and Benefits

- 50-round box
 - 40 grains
- 5.7 x 28mm caliber
Recommended for target practice

Specifications

- Caliber: 5.7 x 28mm
 - Number of rounds: 50
- Pistol Ammo Type: Target
Grain weight: 40

What's in the Box

- Federal Premium American Eagle 5.7 x 28mm 40-Grain
- Centerfire Rifle Ammunition

Important Product and Safety Information

- You must be 18 or older to purchase Rifle or Shotgun Ammunition and 21 or older to purchase Handgun Ammunition. In ordering this product, you certify that you are of legal age and satisfy your jurisdiction's legal requirements to purchase this product.
 - For safety reasons, we do not accept returns on ammunition. Always make sure you use the correct ammunition for your specific firearm.
- The sale or shipment of this product to residents of certain jurisdictions is prohibited. Check your local laws before ordering this product. Check your local laws for any other regulations.
- We recommend the use of protective eyewear whenever using or near the use of this item.
- Item will only be shipped using Ground Shipping to the contiguous 48 states only.

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